

APPENDIX.

CHIEF JUSTICE TANEY TO MR. CHASE.

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1862.

ORDER OF COURT.

TUESDAY, MARCH 10, 1863.

Ordered, upon the request of the Chief Justice, that the following letter from him to the Secretary of the Treasury be entered on the records of the court:

WASHINGTON, FEBRUARY 16, 1863.

SIR: I find that the act of Congress of the last session imposing a tax of three per cent on the salaries of all officers in the employment of the United States, has been construed in your lepartment to embrace Judicial Officers, and the amount of the tax has been deducted from the salaries of the judges.

The first section of the third article of the Constitution provides that "The judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as Congress may from time to time ordain and establish. The judges of both the Supreme and Inferior Courts shall hold their offices during good behavior, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office."

The act in question, as you interpret it, diminishes the compensation of every judge three per cent, and if it can be diminished to that extent by the name of a tax, it may in the same way be reduced from time to time at the pleasure of the legislature.

The Judiciary is one of the three great departments of the government, created and established by the Constitution. Its duties and powers are specifically set forth, and are of a character that requires it to be perfectly independent of the two other departments, and in order to place it beyond the reach and above even the suspicion of any such influence, the power to reduce their compensation is expressly withheld from Congress, and excepted from their powers of legislation.

Language could not be more plain than that used in the Constitution. It is moreover one of its most important and essential provisions. For the articles which limit the powers of the legislative and executive branches of the government, and those which provide safeguards for the protection of the citizen in his person and property, would be of little value without a judiciary to uphold and maintain them, which was free from every influence, direct or indirect, that might by possibility in times of political excitement warp their judgments.

Upon these grounds I regard an act of Congress retaining in the Treasury a portion of the compensation of the judges, as unconstitutional and void; and I should not have troubled you with this letter, if there was any mode by which the question could be decided in a judicial proceeding. But all of the judges of the courts of the United States have an interest in the question, and could not therefore with propriety undertake to hear and decide it. I am, however, not willing to leave it to be inferred from my silence that I admit the right of the legislature to diminish in this, or any other mode, the compensation of the judges when once fixed by law; and my silence would naturally — perhaps necessarily — be looked upon as acquiescence on my part in the power claimed and exercised under this act of Congress; and would be regarded as a precedent, establishing the principle that the legislature may at its pleasure regulate the salaries of the judges of the courts of the United States, and may reduce their compensation whenever Congress may think proper.

Having been honored with the highest judicial station under the Constitution, I feel it to be more especially my duty to uphold and maintain the constitutional rights of that department of the government, and not by any act or word of mine, leave it to be supposed that I acquiesce in a measure that displaces it from the independent position assigned it by the statesmen who framed the Constitution; and in order to guard against any such inference,

I present to you this respectful but firm and decided remonstrance against the authority you have exercised under this act of Congress, and request you to place this protest upon the public files of your office as the evidence that I have done everything in my power to preserve and maintain the Judicial Department in the position and rank in the government which the Constitution has assigned to it.

I am, sir, very respectfully yours.

R. B. TANEX.

HON. S. P. CHASE,
Secretary of the Treasury.